

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

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Illinois Commerce Commission	)	
On Its Own Motion	)	
vs.	)	
Illinois Bell Telephone Company,	)	
Verizon North, Inc. and Verizon South, Inc.	)	Docket No. 06-0562
	)	
Investigation into the applicability of	)	
Section 2-202 of the Public Utilities Act	)	
To intrastate coin drop pay telephone	)	
Revenues	)	

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**VERIZON’S INITIAL MEMORANDUM ON REHEARING**

Verizon North Inc. and Verizon South Inc. (collectively, “Verizon”), through their attorneys and pursuant to the schedule adopted by the Administrative Law Judge at the December 12, 2007 status hearing, hereby submit their Initial Memorandum on Rehearing to respond to the Commission questions set forth in the December 7, 2007 “Notice of Ruling” (“Notice”).

Verizon addresses the Commission’s three questions in turn:

- 1. Assuming, arguendo, that the Commission determines that PUF taxes are owed for revenues derived for coin-drop payphones:**
  - a. Does the Commission have any authority to waive the payment of taxes that are past due? If so, under what circumstances?**

For the reasons stated in Verizon’s filings throughout this docket, as well as those set forth in the Administrative Law Judge’s (“ALJ’s”) April 13, 2007 Proposed Order and multiple memoranda to the Commission, Verizon objects to the predicate assumption that PUF taxes are owed on revenues derived from Verizon’s local coin drop payphone calls. Verizon does not repeat the arguments set forth in those authorities again here, but incorporates them by reference.

Even if PUF taxes were due on Verizon’s local coin-drop payphone revenues (and they are not), the Commission would have plenary authority to waive the payment of any such past-due amounts. While 220 ILCS 5/2-202 does not explicitly address waiver of PUF tax payments, it does give the Commission discretion in setting the percentage rate associated with the PUF tax statute. Although the statute imposes a cap on that rate, it sets no floor, indicating that the Commission may elect to recover a lower level of PUF tax, or even none at all. *See* 220 ILCS 5/2-202(c). Moreover, the language of Section 2-202 is permissive, rather than mandatory, stating that the Commission “may” enforce the collection of delinquent payments required under Section 2-202, and “may” excuse the payment of assessed penalties thereunder. *See* 220 ILCS 5/2-202(f). In other words, the statute allows the Commission to take specified actions, but does not require it to do so, thereby permitting the Commission to waive payments as it chooses. Finally, the Commission has general authority to hear, settle and dispose of claims asserted against the utilities that it regulates. *See, e.g.,* 220 ILCS 5/10-101 *et seq.* (giving the Commission broad authority to conduct investigations and accept settlements).

There is no authority relating to the specific subject of whether the Commission has authority to waive payment of past due taxes. However, there is an important provision of Illinois tax law that is conspicuously absent from 220 ILCS 5/2-202. While 20 ILCS 2505/2505-250 imposes explicit limitations on the Illinois Department of Revenue’s authority to compromise debts due to the state, there is *no such prohibition on the Commission doing so* regarding amounts asserted to be due under 220 ILCS 5/2-202. This is further indication of the Illinois Legislature’s intention to allow the Commission to compromise claims for PUF “taxes” ostensibly due – had the legislature wanted to impose a restriction on the Commission’s authority, it certainly knew how to craft appropriate language.

Instead, the Commission has the authority to, and regularly does, enter into settlements in a wide variety of contexts involving monetary claims,<sup>1</sup> and can waive the payment of any past due PUF taxes as well. It is certainly appropriate here, particularly given the fact that until the institution of this proceeding (after AT&T requested the refund of approximately \$900,000 in PUF taxes), the Commission had not disputed Verizon's position that PUF taxes were not due on the local coin drop payphone revenues at play here. As noted in Verizon's October 17, 2006 Verified Initial Comments in this proceeding ("VZ Initial Comments"), after the Commission requested remittance of PUF taxes on such revenues in 2004, Verizon responded that such revenues were neither subject to the Commission's oversight, nor properly included in the calculation of the PUF tax, because they were not subject to the tariffing requirements of 220 ILCS 5/9-102. *See* VZ Initial Comments at 2 and Exhibit B thereto. The Commission did not refute or otherwise respond to Verizon's correspondence. *Id.*

**b. How do tax or utility law and case history treat the payment of back taxes owed by utilities? Do the prescriptions against retroactive ratemaking apply to back taxes that are past due?**

It is critical that the Commission recognize that the PUF "tax" is not a state tax in the true sense of the term. Although the word "tax" appears in 220 ILCS 5/2-202(c), the taxation section of the Illinois statutes appears in Chapter 35 thereof ("Revenue"), not Chapter 220 ("Public Utilities Act"). The PUF "tax" is not administered or collected by the Illinois Department of Revenue,<sup>2</sup> nor is it remitted to the General Fund of the state of Illinois. The PUF "tax" is instead administered and collected by the Commission pursuant to the Public Utilities Act, and is remitted to the Commission's Public Utility Fund (not the state's General Revenue Fund), to be

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<sup>1</sup> For example, in the past several years, the Commission has entered into widely publicized financial settlements with SBC and Commonwealth Edison concerning service quality issues.

<sup>2</sup> Chapter 20 of the Illinois statutes expressly delineates the taxes administered by the Illinois Department of Revenue, and the PUF "tax" is not among them. *See* 20 ILCS 2505/2505-15 through 2505-105.

used only for the expenses of the Commission as determined by the Commission. *See* 220 ILCS 5/2-202 and 30 ILCS 105/8.14.

Thus, while Illinois tax law might be informative by analogy, it is not applicable to the instant proceeding, and there is no legal basis to rely upon tax law for purposes of evaluating this case on rehearing. To the extent that the Commission should choose to look to tax law – by analogy only – it is clear that the Commission has full authority to compromise and/or waive collection of any PUF taxes allegedly owed by Verizon, in contrast to the limitations placed on the Department of Revenue in collecting taxes due to the state’s General Revenue Fund. As noted above, the instant situation is no different than the settlement of any other disputed monetary claim pending before the Commission, and tax settlements are common when disputed issues of law or fact make tax liabilities unclear.

As to the question of retroactive ratemaking, any attempt by the Commission to collect PUF taxes on Verizon’s local coin drop payphone revenues would necessarily require a determination that said revenues were “gross revenues” collected pursuant to the tariffing requirements of 220 ILCS 5/9-102. However, as Verizon advised the Commission in 2004, as a result of FCC action, these revenues were no longer subject to Section 9-102’s tariffing requirement, and could not be required to be tarified thereunder.<sup>3</sup> Thus, any Commission decision to collect PUF tax on these revenues now, after the fact, would violate the well-known prohibition against retroactive rate-making, because it would rely on a retroactive tariff filing requirement.

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<sup>3</sup> To the extent tariffs remained on file for informational purposes, consistent with the FCC’s nod to “information and price disclosure” (discussed below), they were voluntary only, not mandated by Section 9-102. As such, revenues derived from services therein would be excluded from the definition of “gross revenues” because they were not tarified pursuant to Section 9-102’s requirements.

**2. What regulatory requirements does the Commission continue to impose on coin-drop payphones?**

The FCC's *Payphone Order*<sup>4</sup> and *Order on Reconsideration*<sup>5</sup> eliminated state commission jurisdiction to regulate local coin drop payphone rates, or to impose market entry and exit restrictions. *See Order on Reconsideration* at ¶¶ 9-10. Thus, while the Commission cannot enforce regulations that affect payphone competition (and was ordered to eliminate them), it retains authority to impose and enforce regulations, "on a competitively neutral basis, to provide consumers with information and price disclosure." *Id.* at ¶ 9. The FCC did not elaborate on these concepts, but it is evident that "information and price disclosure" does not extend to rate regulation of local coin drop payphone rates, which was unequivocally terminated.

The Commission also retains authority to ensure that access to dial tone, emergency calls and telecommunications relay service calls for the hearing impaired are available from payphones at no charge to the caller. *Id.* Thus, the provisions of 83 Ill. Admin. Code §§ 725.810, 730.535 and 756.125 remain enforceable. The few provisions of 83 Ill. Admin. Code § 771 that apply to retail services (the majority of the code section addresses wholesale payphone services) and do not relate to rate regulation also survive. Finally, as noted in response to Question 3 below, the Commission retains jurisdiction over intrastate toll coin drop calls.

However, the fact that the Commission maintains jurisdiction over some aspects of payphone services does not justify imposition of the PUF tax on the local coin drop payphone revenues at issue here. Illinois precedent is clear that the PUF tax cannot be imposed on revenues derived from services over which the Commission has some jurisdiction, but not the

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<sup>4</sup> *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, FCC 96-388 (rel. Sept. 20, 1996) ("Payphone Order").

<sup>5</sup> *Order on Reconsideration, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, FCC 96-439 (rel. Nov. 8, 1996) ("Order on Reconsideration").

jurisdiction to regulate the rates thereof. *See Chicago SMSA Limited Partnership v. Illinois Commerce Commission*, 672 N.E.2d 37, 39 (Ill. App. 3<sup>rd</sup> Dist. 1996) (because cellular services do not generate any “gross revenue” as that term is defined in section 3-121, cellular providers “have no tax liability under section 2-202 of the Act” and “are not obligated to pay public utility tax on the revenue generated by their cellular services”); *see also Chicago SMSA Partnership v. Illinois Dept. of Revenue*, 715 N.E.2d 719, 724 (Ill. App. 1<sup>st</sup> Dist. 1999) (explaining that *Chicago SMSA* court “held cellular providers bore no tax liability under the act because the ICC had *excluded the cellular industry from rate regulation*”) (emphasis added).

**3. Does the Commission still have authority over long distance intrastate coin drop calls?**

Yes. The FCC’s *Payphone Order* did not foreclose state rate regulation of the rates for such calls when it eliminated state rate regulation for local coin drop payphone calls. However, this question is ultimately irrelevant because Verizon has not objected to paying the PUF tax on intrastate toll coin drop payphone revenues.

Dated: January 14, 2008

**Verizon North Inc. and Verizon South Inc.**

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**NOTICE OF FILING**

Please take notice that on January 14, 2008, I caused the foregoing "Verizon's Initial Memorandum on Rehearing" in the above-captioned matter to be filed electronically with the Illinois Commerce Commission via its E-Docket system.

  
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Deborah Kuhn

**CERTIFICATE OF SERVICE**

I, Deborah Kuhn, certify that I caused the foregoing "Verizon's Initial Memorandum on Rehearing, to be served upon all parties on the attached service list on this 14<sup>th</sup> day of January, 2008, by electronic mail.

  
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Deborah Kuhn



**ILLINOIS COMMERCE COMMISSION  
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